

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1024 of 2019

Mukund K.P. Pillai @ Kabeer

A. Pichaya

.. Petitioner

Versus

Subha Mukund Pillai

.. Respondent

...

Mr. Kapil Shetye i/b Shubham Singh for the petitioner.

Mr. Sangharsh Waghmare for the respondent.

CORAM: BHARATI DANGRE, J.

DATED : 5th MARCH 2020

P.C:-

1 By the present petition, the petitioner husband question the order of the 5th Joint Civil Judge, Sr. Division, Thane passed in Special Darkhast No.44 of 2011. The said Darkhast was instituted by wife for the enforcement of the order passed under Section 24 of the Hindu Marriage Act granting her maintenance to the tune of Rs.15,000/- per month.

2 In the proceedings in the said Darkhast on 2nd July 2012, the respondent was directed to lead evidence in terms of Order 21 Rule 40 (1) of the Code of Civil Procedure in support of her application. An opportunity was given to the petitioner (judgment debtor) to show cause as to why he should not be

committed to civil prison. The wife (decree holder) examined herself. The petitioner also led his evidence and pursuant thereto, the Civil Judge, Thane concluded that the petitioner has failed to show cause why he should not be committed to civil prison for default in payment of money decree.

3 By the said order, the respondent – decree holder was directed to proceed with execution in furtherance of the inquiry under Order 21 Rule 40(1) of the Code of Civil Procedure.

4 An arrest warrant was issued against the present petitioner and on 7th October 2019, the Court recorded that the petitioner has to pay total amount of Rs.3,90,000/- out of which he has paid only Rs.50,000/- and an amount of Rs.3,40,000/- is balance. Warrant was issued against him and he was directed to deposit the remaining amount of Rs.3,40,000/-.

5 Learned counsel for the petitioner makes a statement which is not disputed by the learned counsel for the respondent that in furtherance of the execution warrant, he has deposited an amount of Rs.3,40,000/- in this Court and on 14th February 2019, the Court recorded that the execution proceedings would not proceed further. The learned counsel do not dispute the position that the said amount has been withdrawn by the respondent.

6 Pertinent to note that the order of interim maintenance was passed in a Petition seeking Dissolution of Marriage filed by the husband and the said Writ Petition was withdrawn in the month of July 2011. The Darkhast proceedings were registered for execution of the decree of payment of maintenance from February 2009 to March 2011 and for recovery of amount of Rs.3,90,000/-.

7 The order of interim maintenance has to continue till the proceedings under the Hindu Marriage Act are pending and when in the month of July 2011, the Hindu Marriage Petition filed by the husband was withdrawn, the order of interim maintenance would come to an end. What remains now to be paid by the petitioner is the amount due from April 2011 to July 2011 @ Rs.15,000/- per month. The learned counsel for the petitioner undertakes to deposit in this Court the said amount within a period of three months. On such amount being deposited, the respondent would be permitted to withdraw the said amount.

8 In light of the aforesaid directions, curtains must be drawn on the present proceedings for execution in Special Darkhast No.44 of 2011 by disposing of the present Writ Petition.

SMT. BHARATI DANGRE, J